

HOUSE BILL NO. 2306

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on General Laws

on January 28, 2021)

(Patron Prior to Substitute--Delegate VanValkenburg)

A BILL to amend and reenact § 2.2-4354 of the Code of Virginia, relating to the Virginia Public Procurement Act; contract clause requiring subcontractor reporting of payments to employees and independent contractors.

Be it enacted by the General Assembly of Virginia:**1. That § 2.2-4354 of the Code of Virginia is amended and reenacted as follows:****§ 2.2-4354. Payment clauses to be included in contracts.**

Any contract awarded by any state agency, or any contract awarded by any agency of local government in accordance with § 2.2-4352, shall include:

1. A payment clause that obligates the contractor to take one of the two following actions within seven days after receipt of amounts paid to the contractor by the state agency or local government for work performed by the subcontractor under that contract:

a. Pay the subcontractor for the proportionate share of the total payment received from the agency attributable to the work performed by the subcontractor under that contract; or

b. Notify the agency and subcontractor, in writing, of his intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.

2. A payment clause that requires (i) individual contractors to provide their social security numbers and (ii) proprietorships, partnerships, and corporations to provide their federal employer identification numbers.

3. An interest clause that obligates the contractor to pay interest to the subcontractor on all amounts owed by the contractor that remain unpaid after seven days following receipt by the contractor of payment

from the state agency or agency of local government for work performed by the subcontractor under that contract, except for amounts withheld as allowed in subdivision 1.

4. An interest rate clause stating, "Unless otherwise provided under the terms of this contract, interest shall accrue at the rate of one percent per month."

Any such contract awarded shall further require the contractor to include in each of its subcontracts a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor.

Additionally, any such contract awarded for the performance of construction services, including construction of higher education and transportation-related projects, shall require the contractor to include in each of its subcontracts a provision requiring the subcontractor to provide the following to the contractor on a monthly basis: (i) payroll records for all of the subcontractor's field construction employees personally performing work directly on the job site; (ii) records of all payments made by the subcontractor to individuals classified as independent contractors; and (iii) the total number of individuals on the job site, including the number classified as employees and the number classified as independent contractors. The general contractor shall compile such information and submit it in a monthly report to the Department of Labor and Industry. The Department of Labor and Industry shall preserve these records for a minimum of six years.

A contractor's obligation to pay an interest charge to a subcontractor pursuant to the payment clause in this section shall not be construed to be an obligation of the state agency or agency of local government. A contract modification shall not be made for the purpose of providing reimbursement for the interest charge. A cost reimbursement claim shall not include any amount for reimbursement for the interest charge.

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